

**Implementing Legislation
on the Rome Statute
of the International Criminal Court**

December 2007

**Ministry of Justice
Republic of Korea**

1 Background

- The International Criminal Court (ICC) was established based on the efforts of the international community devoted to punishing crimes against humanity and preventing their recurrences. The ICC symbolizes the universal humanitarian value of all mankind in the broader context. The Republic of Korea, as a responsible member of the international community, finds it incumbent upon her to participate in and support the activities of the ICC.
- The Republic of Korea played an important role in the discussions leading to the Rome Statute of the International Criminal Court (The Rome Statute) since the mid-1990s. After the Rome Statute was finalized, Korea has actively participated in the preparation to lay foundation of the ICC and in the subsequent ratification process.
- The Korean Government has endeavored to set up the domestic legal system for the punishment of crimes within the jurisdiction of the ICC as well as for the close cooperation with the ICC. The Korean Government is privileged to report that the Congress has passed the Bill titled 『Act on the Punishment, etc. of Crimes within the Jurisdiction of the International Criminal Court』 (the implementing legislation).

2 Progress

• **Specific Progress**

- September 2002

The first draft of the implementing legislation is completed.

- November 2002

The first round of inquiry to gather observations from relevant authorities is completed.

- October 2003

The second round of inquiry to gather observations from relevant authorities is completed.

- May 2004

The draft of the implementing legislation is released to public.

- June 2004

The first public hearing is held.

● **Recent Progress**

- February 2006

The pending legislation is amended to reflect the views and observations gathered from the public hearing.

- April 2006

The Ministry of Justice launches the 『Task Force on Implementing Legislation』 and continues to examine contentious issues.

- June 2006

The Task Force carries out thorough research on implementing legislations of major countries.

- September 2006

The final Bill is released.

- December 2006

After the review by the Ministry of Government Legislation, the Bill passes the Deputy Ministers' Meeting and the Cabinet Meeting. The Bill is then submitted to the National Assembly for congressional debate.

- March 2007

The Specialized Members' Office of the Legislation & Judiciary Committee of the National Assembly conducts the preliminary examination of the Bill.

- June 2007

The Bill is submitted to the plenary meeting of the Specialized Members' Offices of the Legislation & Judiciary Committee of the National Assembly.

- November 2007

The National Assembly passes the Bill. The Bill is now pending presidential review and promulgation.

3 Outline of Korean Implementing Legislation

● Outline of Korean Domestic Implementing Legislation

- Title of the Implementing Legislation

「Act on the Punishment, etc. of Crimes within the Jurisdiction of the International Criminal Court」

- Structure

3 Chapters, 20 Articles and Supplementary Provisions

Chapter 1: General Provisions (Article 1 ~ Article 7)

Chapter 2: Punishment of Crimes within the Jurisdiction of the ICC (Article 8 ~ Article 18)

Chapter 3: Cooperation with the ICC (Article 19 ~ Article 20)

4 Major Contents of Implementing Legislation

● Purpose (Article 1)

- To respect the dignity and value of humanity as well as the enforcement of international justice

- To punish crimes within the jurisdiction of the ICC

- To stipulate the procedures concerning the cooperation between the Republic of Korea and the ICC

• **Definition of Terms (Article 2)**

- Article 2 provides definitions for certain key terms used throughout the implementing legislation.
- “Crimes of genocide, etc.” refers collectively to crimes as defined in Articles 8 to 14 of the implementing legislation.

• **Scope of Application (Article 3)**

- Provision on universal jurisdiction (Paragraph 5)

The implementing legislation applies to aliens who are present in the territories of the Republic of Korea after committing crimes of genocide, etc. outside the territories of the Republic of Korea.

- In order to put an end to impunity without infringing upon the sovereignty of foreign countries or undermining legitimate diplomatic functions, the universal jurisdiction is triggered by the “presence” of the said aliens. Thus, the universal jurisdiction is conditional upon the “presence” of the suspects in the territories of the Republic of Korea.

• **Non-applicability of Statute of Limitations (Article 6)**

- Crimes of genocide, etc. are not subject to statute of limitations.

• **Dismissal by Judgment (Article 7)**

- No person who has already been convicted or acquitted by the ICC shall be tried under this Act.

※ *Article 7 of the Criminal Act of the Republic of Korea*

In sentencing a person who has already served a sentence, in whole or in part, outside the territories of the Republic of Korea for the same offence of which he is convicted in the Republic of Korea, the judge may remit the sentence.

• **Genocide (Article 8)**

- Genocidal Intent

Intent to destroy, in whole or in part, a national, racial, ethnical or religious group as such

- Enumerated Acts

Killing members of the group;

Causing serious bodily or mental harm to members of the group;

Deliberately inflicting on the group severe conditions of life calculated to bring about its physical destruction in whole or in part;

Imposing measures intended to prevent births within the group;

Forcibly transferring children of the group to another group.

- Inciting others to commit the crime of genocide or an attempt to commit the crime of genocide is separately criminalized.

- **Crimes against Humanity (Article 9)**

- Contextual Element

A widespread or systematic attack directed against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack.

- Enumerated Acts

Murder;

Extermination;

Enslavement;

Deportation or forcible transfer of population;

Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

Torture;

Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced

sterilization, or any other form of sexual violation of comparable gravity;
Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law;

Enforced disappearance of persons;

Apartheid;

Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

- An attempt to commit the crime against humanity is separately criminalized.

• **War Crimes (Articles 10-14)**

- Structural Overview: Classification of crimes based on underlying conduct

- Article 10 : War crimes against protected persons

- ✧ The definition of "persons protected under the international humanitarian law" is found in Article 2, Paragraph 7. The definition draws from the Geneva Conventions and the Protocol I Additional to the Geneva Conventions.

- Article 11 : War crimes against property

- Article 12 : War crimes against humanitarian activities or war crimes of improperly using distinctive emblems, etc.

- Article 13 : War crimes of using prohibited methods

- Article 14 : War crimes of using prohibited weapons

- In the original Bill as released in 2004, war crimes were classified into the following categories in line with the provisions of the Rome Statute:

Grave breaches of the Geneva Conventions;

Other war crimes in international armed conflict;

Serious violations of article 3 common to the four Geneva Conventions in

the case of an armed conflict not of an international character;

Other serious violations of the law and customs applicable in armed conflict not of an international character.

⇒ The current structure was adopted to address the extensive overlap in the enumerated acts under categories of international armed conflict and armed conflict not of an international nature. This structure is in line with the structure developed in the implementing legislation of Germany.

• **Offences against the Administration of Justice (Article 16)**

- Offences that traditionally fall under the “obstruction of justice” category of criminality are separately criminalized.

※ The provision also applies to domestic proceedings initiated at the request or demand from the ICC.

- Enumerated Acts

- Intentionally presenting false evidence; obstructing the attendance or testimony of a witness by assault or intimidation; giving or promising to give money or other financial benefits with the intent to obstruct the attendance or testimony of a witness; receiving or asking, or agreeing to receive money or other financial benefits in conjunction with the attendance or testimony.
- Perjury; intentionally giving false testimony; false testimony in furtherance of the intent to adversely affect the defendant; presenting false expert opinion, translation, or interpretation; destruction of evidence; retaliating the witness for his testimony.
- Obstruction of official duties of an ICC employee by assault or intimidation, obstruction of official duties of an ICC employee by deceit, obstruction of official duties of an ICC employee by aggravated means as defined in the

Article 147 of the Criminal Act of the Republic of Korea.

- Bribing of an ICC employee
- **Exclusion of provisions requiring the victim's formal complaint for Prosecution/Exclusion of provisions barring prosecution when the victim explicitly objects to prosecution (Article 17).**
 - Even if the underlying offence requires a formal complaint of the victim or the prosecution of such offence is normally barred when accompanied by the explicit objection of the victim under the Criminal Act of the Republic of Korea, such restrictions do not apply to crimes of genocide, etc.
- **Surrender of Criminals (Article 19)**
 - Surrender of persons to the ICC is to be executed pursuant to the 『Act on Extradition』 which governs bilateral extradition matters.
 - ※ It is duly noted that the Rome Statute distinguishes "extradition" between States from "surrender" between a State and the ICC.
 - The Rome Statute shall prevail to the extent that the provisions of the 『Act on Extradition』 differ from applicable provisions of the Rome Statute.
- **Mutual Legal Assistance in Criminal Matters (Article 20)**
 - International cooperation and judicial assistance with the ICC is to be executed pursuant to the 『Act on the Mutual Legal Assistance in Criminal Matters』 .
 - The Rome Statute of the ICC shall prevail to the extent that the provisions of the 『Act on the Mutual Legal Assistance in Criminal Matters』 differ from applicable provisions of the Rome Statute.
- **Supplementary Provisions**
 - The Act will become effective from the date of promulgation
 - Partial revision to the 『Act on Protection of Persons Giving Information on

Certain Crimes』

In order to protect persons giving information on crimes within the jurisdiction of the ICC, those crimes are added to the list of "certain crimes" under the 『Act on Protection of Persons Giving Information on Certain Crimes』 .

- Partial revision to the 『Act on Regulation and Punishment of Concealing Criminal Proceeds』

The crimes within the jurisdiction of the ICC are added to the list of "certain crimes" to which the 『Act on Regulation and Punishment of Concealing Criminal Proceeds』 applies in order to criminalize conduct that hinders forfeiture of proceeds accruing from commission of crimes within the jurisdiction of the ICC.